REMARKS/ARGUMENTS

Claim 16 was rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. Claim 16 has been canceled by amendment herein, thereby rendering the rejection moot.

Claim 15 was rejected under 35 U.S.C. 101 as being directed to non-statutory subject matter. As suggested by the Examiner, claim 15 has been amended to recite the method according to claim 14, rather than the use of the method. Accordingly, Applicant respectfully requests withdrawal of the rejection.

Claims 14-16 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,434,718 to Kawahara (hereinafter "Kawahara") in view of U.S. Patent No. 5,309,443 to Schorman (hereinafter "Schorman"). As mentioned above, claim 16 has been canceled. Further, for the following reasons, the rejection is respectfully traversed as it applies to claims 14 and 15.

With reference to claim 14, neither Kawahara, Schorman, nor any predictable combination thereof, teaches, suggests or otherwise renders obvious the step of "halting the process of updating a scale factor during ADPCM decoding per sub-band in the presence of an unrecoverable transmission error in said audio compressed frame data," as required. As acknowledged by the Examiner, Kawahara does not teach this step. Therefore, the Examiner relies on Schorman for teaching the limitations of this step.

Specifically, the Examiner states that "Schorman teaches the limiter function that halt the scaling factor during the decoding of ACPCM." For the following reasons, Applicant respectfully disagrees. Schorman does not provide any teaching relating to halting the updating of a scaling factor in the presence of an unrecoverable error, as presently claimed. With

reference to the limiter cited by the Examiner, Schorman merely states that a limiter (16) is used with a summer (15) to adjust the threshold of a threshold detector (17). In turn, by selecting one of two attenuators (20, 21), the threshold detector (17) controls the level of attenuation of applied to a frame containing errors. In contrast to the application of attenuation taught by Schorman, claim 14 requires the halting of a process, namely the updating of a scaling factor. Thus, the use of a limiter for attenuating a frame as taught by Schorman, cannot be considered as the "halting the process of updating a scaling factor" required by claim 14. Therefore, even if the teachings of Schorman are considered in combination with the teachings of Kawahara, the aforementioned feature of independent claim 14 cannot reasonable be said to be present in the resulting combination.

In order to maintain an obviousness rejection under 35 U.S.C. 103(a), the combination of references prior art references must teach, suggest or otherwise render obvious *each and every feature of the claim*. MPEP § 2143.03 requires the consideration of every claim feature in an obviousness determination. Furthermore, as recently articulated by the Board of Patent Appeals and Interferences:

> When determining whether a claim is obvious, an examiner must make "a searching comparison of the claimed invention – *including all its limitations* – with the teaching of the prior art." *In re Ochiai*, 71 F.3d 1565, 1572 (Fed. Cir. 1995) (emphasis added). Thus, "obviousness requires a suggestion of all limitations in a claim." *CFMT, Inc. v. Yieldup Intern. Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003) (*citing In re Royka*, 490 F.2d 981, 985 (CCPA 1974)). Moreover, as the Supreme Court recently stated, "*there must be some articulated reasoning* with some rational underpinning to support the legal conclusion of obviousness." *KSR Int'l v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007) (quoting In re Kahn, 441 F.3d 977, 988 (Fed. Cir. 2006) (emphasis added)).

Ex parte Wada and Murphy, Appeal 2007-3733 (January 14, 2008). Therefore, since the above-noted limitation of claim 14 is completely absent from the combined teachings of Kawahara and Shorman, it is respectfully submitted that the rejection be withdrawn.

If there are any fees resulting from this communication, please charge same to our Deposit Account No. 16-0820, our Order No. NGB-35848.

Respectfully submitted,

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July 21, 2008